

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4480**

BY DELEGATES ANDERSON, J. KELLY, GRAVES,

WAMSLEY, HANSEN, AND YOUNG

[Introduced February 1, 2022; Referred  
to the Committee on Energy and Manufacturing then  
Finance]

1 A BILL to amend and reenact §22-5-2 and §22-5-4 of the Code of West Virginia, 1931, as  
 2 amended, all relating to air pollution control, and granting to the West Virginia Department  
 3 of Environmental Protection Division of Air Quality the authority to invest the money held  
 4 in the Air Pollution Control Fund (Fund #3336) and the Air Pollution Education and  
 5 Environment Fund (Fund #3024) in order to receive interest on the funds held in those  
 6 accounts in order to offset decreasing permit fee collections and to preserve funding for  
 7 the West Virginia Department of Environmental Protection Division of Air Quality.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. AIR POLLUTION CONTROL.**

**§22-5-2. Definitions.**

1 The terms used in this article are defined as follows:

2 ~~(1)~~ “Air pollutants” means solids, liquids, or gases which, if discharged into the air, may  
 3 result in a statutory air pollution.

4 ~~(2)~~ “Board” means the air quality board continued pursuant to the provisions of article two,  
 5 chapter twenty-two-b of this code.

6 ~~(3)~~ “Director” means the director Secretary of the Division Department of Environmental  
 7 Protection or such other person to whom the director has delegated authority or duties pursuant  
 8 to §22-1-6 or §22-1-8 of this code.

9 ~~(4)~~ “Discharge” means any release, escape, or emission of air pollutants into the air.

10 ~~(5)~~ “Person” means any and all persons, natural or artificial, including the state of West  
 11 Virginia or any other state, the United States of America, any municipal, statutory, public, or  
 12 private corporation organized or existing under the laws of this or any other state or country, and  
 13 any firm, partnership, or association of whatever nature.

14 ~~(6)~~ “Statutory air pollution” means and is limited to the discharge into the air by the act of  
 15 man of substances (liquid, solid, gaseous, organic, or inorganic) in a locality, manner, and amount  
 16 as to be injurious to human health or welfare, animal or plant life, or property, or which would

17 interfere with the enjoyment of life or property.

**§22-5-4. Powers and duties of director; and legal services; rules.**

1 (a) The director ~~is authorized~~ may:

2 (1) ~~To develop~~ Develop ways and means for the regulation and control of pollution of the  
3 air of the state;

4 (2) ~~To advise~~ Advise, consult, and cooperate with other agencies of the state, political  
5 subdivisions of the state, other states, agencies of the federal government, industries, and with  
6 affected groups in furtherance of the declared purposes of this article;

7 (3) ~~To encourage~~ Encourage and conduct such studies and research relating to air  
8 pollution and its control and abatement as the director may ~~deem~~ consider advisable and  
9 necessary;

10 (4) ~~To promulgate~~ Promulgate legislative rules in accordance with ~~the provisions of §29A-~~  
11 3-1 *et seq.* of this code not inconsistent with the provisions of this article, relating to the control of  
12 air pollution: *Provided*, That no rule of the director ~~shall~~ may specify a particular manufacturer of  
13 equipment nor a single specific type of construction nor a particular method of compliance except  
14 as specifically required by the “Federal Clean Air Act,” as amended, nor ~~shall~~ may any such rule  
15 apply to any aspect of an employer-employee relationship: *Provided, however*, That no legislative  
16 rule or program of the director hereafter adopted ~~shall~~ may be any more stringent than any federal  
17 rule or program except to the limited extent that the director first makes a specific written finding  
18 for any such departure that there exists scientifically supportable evidence for such rule or  
19 program reflecting factors unique to West Virginia or some area thereof;

20 (5) ~~To enter~~ Enter orders requiring compliance with the provisions of this article and the  
21 rules lawfully promulgated hereunder;

22 (6) ~~To consider~~ Consider complaints, subpoena witnesses, administer oaths, make  
23 investigations, and hold hearings relevant to the promulgation of rules and the entry of compliance  
24 orders hereunder;

25           (7) ~~To encourage~~ Encourage voluntary cooperation by municipalities, counties, industries,  
26 and others in preserving the purity of the air within the state;

27           (8) ~~To employ~~ Employ personnel, including specialists and consultants, purchase  
28 materials and supplies, and enter into contracts necessary, incident, or convenient to the  
29 accomplishment of the purpose of this article;

30           (9) ~~To enter~~ Enter and inspect any property, premise, or place on or at which a source of  
31 air pollutants is located or is being constructed, installed, or established at any reasonable time  
32 for the purpose of ascertaining the state of compliance with this article and rules promulgated  
33 under the provisions of this article. No person ~~shall~~ may refuse entry or access to any authorized  
34 representative of the director who requests entry for purposes of inspection, and who presents  
35 appropriate credentials; nor ~~shall~~ may any person obstruct, hamper, or interfere with any such  
36 inspection: *Provided*, That nothing contained in this article eliminates any obligation to follow any  
37 process that may be required by law;

38           (10) Upon reasonable evidence of a violation of this article, which presents an imminent  
39 and serious hazard to public health, ~~to~~ give notice to the public or to that portion of the public  
40 which is in danger by any and all appropriate means;

41           (11) ~~To cooperate~~ Cooperate with, receive, and expend money from the federal  
42 government and other sources; ~~and the director may~~

43           (12) Cooperate with any public or private agency or person and receive therefrom and on  
44 behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of the  
45 "Air Pollution Education and Environment Fund" which is hereby continued in the state Treasury.

46           (A) The moneys collected pursuant to this article which are directed to be deposited in the  
47 "Air Pollution Education and Environment Fund" ~~must~~ shall be deposited in a separate account in  
48 the state Treasury and expenditures for purposes set forth in this article are not authorized from  
49 collection but are to be made only in accordance with appropriation and in accordance with ~~the~~  
50 ~~provisions of~~ §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in article

51 §5A-2-1 *et seq.* of this code. ~~Amounts collected which are found from time to time to exceed the~~  
52 ~~funds needed for the purposes set forth in this article may be transferred to other accounts or~~  
53 ~~funds and redesignated for other purposes by appropriation of the Legislature.~~

54 (B) Moneys in the fund, if not needed for immediate use or disbursement, may be invested  
55 or reinvested by the agency in obligations or securities which are considered lawful investments  
56 for public funds under this code.

57 (C) At the end of each fiscal year, any unexpended balance, including accrued interest,  
58 on deposit in the Air Pollution Education and Environment Fund may not be transferred to the  
59 General Revenue Fund, but shall remain in the Air Pollution Education and Environment Fund for  
60 expenditure pursuant to this section.

61 ~~(12)~~ (13) To represent Represent the state in any and all matters pertaining to plans,  
62 procedures, and negotiations for interstate compacts in relation to the control of air pollution;

63 ~~(13)~~ (14) To appoint Appoint advisory councils from such areas of the state as he or she  
64 may determine. The members shall possess some knowledge and interest in matters pertaining  
65 to the regulation, control, and abatement of air pollution. The council may advise and consult with  
66 the director about all matters pertaining to the regulation, control, and abatement of air pollution  
67 within such area;

68 ~~(14)~~ (15) To require Require any and all persons who are directly or indirectly discharging  
69 air pollutants into the air to file with the director such information as the director may require in a  
70 form or manner prescribed by him or her for such purpose, including, but not limited to, location,  
71 size and height of discharge outlets, processes employed, fuels used and the nature and time  
72 periods of duration of discharges. Such information shall be filed with the director, when and in  
73 such reasonable time, and in such manner as the director may prescribe;

74 ~~(15)~~ (16) To require Require the owner or operator of any stationary source discharging  
75 air pollutants to install such monitoring equipment or devices as the director may prescribe and  
76 to submit periodic reports on the nature and amount of such discharges to the director;

77           ~~(16)~~ (17) ~~To do~~ Do all things necessary and convenient to prepare and submit a plan or  
78 plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as  
79 amended: *Provided*, That in preparing and submitting each such plan the director shall establish  
80 in ~~such~~ the plan that ~~such~~ the standard shall be first achieved, maintained and enforced by limiting  
81 and controlling emissions of pollutants from commercial and industrial sources and locations and  
82 shall only provide in ~~such~~ the plans for limiting and controlling emissions of pollutants from private  
83 dwellings and the curtilage thereof as a last resort: *Provided, however*, That nothing herein  
84 contained affects plans for achievement, maintenance and enforcement of motor vehicle emission  
85 standards and of standards for fuels used in dwellings;

86           ~~(17)~~ (18) ~~To promulgate~~ Promulgate legislative rules, in accordance with ~~the provisions of~~  
87 §29A-3-1 *et seq.* of this code, providing for the following:

88           (A) Procedures and requirements for permit applications, transfers and modifications and  
89 the review thereof;

90           (B) Imposition of permit application and transfer fees;

91           (C) Establishment of criteria for construction, modification, relocation, and operating  
92 permits;

93           (D) Imposition of permit fees and of certificate fees: *Provided*, That any person subject to  
94 operating permit fees pursuant to section twelve of this article is exempt from imposition of the  
95 certificate fee; and

96           (E) Imposition of fees, and penalties and interest for the nonpayment of fees.

97           (i) The fees, penalties and interest shall be deposited in a special account in the state  
98 Treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control  
99 Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying  
100 salaries and expenses of the board, the ~~office~~ division of air quality and their employees to carry  
101 out the provisions of this article: *Provided*, That the fees, penalties and interest collected for  
102 operating permits required by §22-5-12 of this code shall be expended solely to cover all

103 reasonable direct and indirect costs required to administer the operating permit program.

104 (ii) The fees collected pursuant to this subdivision ~~must~~ shall be deposited in a separate  
 105 account in the state Treasury and expenditures for purposes set forth in this article are not  
 106 authorized from collections but are to be made only in accordance with appropriation and in  
 107 accordance with ~~the provisions of §12-3-1 et seq.~~ of this code and upon fulfillment of the  
 108 provisions set forth in §5A-2-1 *et seq.* of this code.

109 (iii) Moneys in the fund, if not needed for immediate use or disbursement, may be invested,  
 110 or reinvested by the agency in obligations or securities which are considered lawful investments  
 111 for public funds under this code.

112 (iv) At the end of each fiscal year, any unexpended balance, including accrued interest,  
 113 on deposit in the Air Pollution Control Fund shall not be transferred to the General Revenue Fund,  
 114 but shall remain in the Air Pollution Control Fund for expenditure pursuant to this section.  
 115 ~~Amounts collected which are found from time to time to exceed the funds needed for the purposes~~  
 116 ~~set forth in this article may be transferred to other accounts or funds and redesignated for other~~  
 117 ~~purposes by appropriation of the Legislature: Provided, however, That for fiscal year one~~  
 118 ~~thousand nine hundred ninety-three, expenditures are permitted from collections without~~  
 119 ~~appropriation by the Legislature;~~

120 ~~(18)~~ (19) Receipt of any money by the director as a result of the entry of any consent order  
 121 shall be deposited in the State Treasury to the credit of the Air Pollution Education and  
 122 Environment Fund.

123 (b) The Attorney General and his or her assistants and the prosecuting attorneys of the  
 124 several counties shall render to the director without additional compensation such legal services  
 125 as the director may require of them to enforce the provisions of this article.

NOTE: The purpose of this bill is to help stabilize funding sources for the WVDEP DAQ. Air quality in West Virginia has improved drastically over the years and is a reason to celebrate. The financial reality from decreased industrial air emissions however, results in a decrease in DAQ's revenues. Since the Clean Air Act was amended in 1990, industrial air emissions in WV have decreased approximately 80%. Fees for large industrial sources

are based on their emissions rates; therefore, revenues have also been decreasing. Currently, the DAQ funds are not invested. This proposal would establish authority for WVDEP to invest DAQ funds.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.